

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Case No. 1-05-CR-123-01

Plaintiff,

Hon. Richard Alan Enslen

v.

SURABHI DESAI,

ORDER

Defendant.

This matter is before the Court on Defendant Surabhi Desai's Motion to Stay and Delete Condition Three of the Special Conditions of Supervision pursuant to Federal Rule of Criminal Procedure 35(a) and 32.1.

After review, the Court finds that it no longer has proper jurisdiction over the Motion. On December 28, 2006, Defendant filed a notice of appeal of her conviction and sentence to the Sixth Circuit Court of Appeals. "It is well settled that the filing of the notice of appeal with the district court clerk deprives the district court of jurisdiction to act in matters involving the merits of the appeal." *United States v. Holloway*, 740 F.2d 1373, 1382 (6th Cir. 1984); *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 378 (1985). It is clear that Defendant's Motion involves the merits of the appeal where Defendant requests the conditions of her sentence be modified and reconsideration of her Motion for downward departure.

Further, to the extent that Defendant's motion seeks to correct the sentence under Federal Rule of Criminal Procedure 35(a), a court may only make such a correction within 7 days after sentencing. FED. R. CR. P. 35(a). The Sixth Circuit Court of Appeals had held that "the phrase

‘correct a sentence’ as used in Rule 35 requires a district court to actually resentence a defendant within seven (7) days after the court first orally sentences that defendant.” *United States v. Vicol*, 460 F.3d 693, 694 (6th Cir. 2006). In the instant action, more than seven days has elapsed after sentencing. Therefore, pursuant to *Vicol*, the Court no longer has jurisdiction to correct the judgment under Rule 35(a).

THEREFORE, IT IS HEREBY ORDERED that Defendant Surabhi Desai’s Motion to Stay or Delete Condition Three of the Special Conditions of Supervision (Dkt. No. 86) is **DENIED**.

DATED in Kalamazoo, MI:
January 26, 2007

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE